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LIABILITY OF PERSONS REQUESTING APPOINTMENT OF SPECIAL OFFICER FOR HIS ACTS.

In *Samuel v. Wanamaker*, 24 N. Y. Law Journal, 215 Sup. Ct., App. Div.) it was held that a special officer appointed pursuant to the charter of New York, but at the request of the defendant, in so far as he acts independently of the person requesting his appointment, is solely responsible for his acts. In considering this subject there are three distinctions to be noticed among the cases. The first class includes those wherein it was held that such special officer was not an agent or servant of the person requesting his appointment. The second class comprises those wherein it was recognized that he had an official character, but that, nevertheless, his employer was chargeable as for the acts of an agent. The third class comprises those cases in which the plaintiff's own words and acts contributed to the suspicions causing his arrest; and it was immaterial whether the officer acted as an agent or in his official capacity inasmuch as there was no liability in either case. *Formwalt v. Hylton*, 66 Tex. 288.

The first class of cases seems to incline toward this proposition that it is the intent of the law to invest the special officer with all the rights and immunities of a regular policeman. If this were not so and the person appointed had not such powers and privileges, the appointment would be rendered nugatory. The authorities also agree that the mere fact that the officer's salary is paid by the person requesting his appointment does not deprive the policeman of the broad authority specially delegated to him. So it was held, he was not the mere servant of a person who paid

his salary and whose premises he was appointed to watch, and such person was not liable for his official acts. *Hershey v. O'Neill*, 36 N. Y. 168; *Healy v. Lathrop*, 171 Mass. 263. So, where a special officer makes an arrest for disorderly conduct, the presumption is that he acted in his official capacity as an agent of the state. *Tolchester Beach Imp. Co. v. Steinmeier*, 72 Md. 313. But this presumption is one of fact and may be rebutted. *Brill v. Eddy*, 115 Mo. 605. And where a special officer makes an arrest he should show his warrant. *Frost v. Thomas*, 24 Wend. (N. Y.) 418. So where a passenger had been arrested without a warrant for alleged non-payment of fare—but the alleged offense was not committed in the presence of the officer arresting—the company may be liable for damages in an action for false imprisonment. *Krulevitz v. Eastern Ry. Co.*, 143 Mass. 228. And to charge the employer of a special officer for liability, it must be shown either that there was express precedent authority for doing the act, or that the act has been ratified and adopted. *National Bank of Commerce v. William Baker*, 77 Md. 462; *Carter v. Howe*, 51 Md. 298. So a railway company is not liable for an unlawful arrest not directed by it, and outside a conductor's authority, unless it subsequently ratifies the same. *Gardner v. Boston and Me. R. R.*, 72 N. H. 413.

The cases which are apparently in conflict with *Samuel v. Wanamaker* can, however, be distinguished. Without examining them all in detail the following general principle is undoubtedly true. The right of selection lies at the foundation of the responsibility of a master or principle for the acts of his servant or agent. *Kelly v. New York*, 11 N. Y. 436; *Walcott v. Swampcolt*, 1 Allen (Mass.) 151. So a police officer may be a civil agent. And where he is in the employ, and under the direction, and subject to the control and interference of a person, he becomes thereby that person's servant and is in no just and accurate sense an independent officer. *Gerhardt v. Savings Institution*, 38 Mo. 60; *Walker v. Railroad Co.*, 39 L. J. C. P. 346. And where a servant was also a city police officer, and, through excessive violence, injured a boy wrongfully jumping cars on his employer's property, the fact that he was such an officer will not relieve the company from liability. *Brill v. Eddy*, 115 Mo. 596. And where the code enacts "That the conductor of every train of railroad cars shall have all the powers of a conservator of the peace" the company is not relieved from liability, although the arrest was made in good faith and on probable cause. *Gillingham v. Ohio River R. R. Co.* 35 W. Va. 588. The rule may also be deduced that, where an employer authorizes arrests to be made whenever the officer thinks necessary to preserve order, or to see that his stock of goods be not depleted, and such officer makes wrongful arrests, such employer is liable, for he has made the officer his agent. So, although an honest mistake is made, his official character will not avail the principal of such agent. *Dickson v. Waldron*, 135 Ind. 507; *Tyson v. Bauland*, 68 App. Div. (N. Y.) 310; 85 App. Div. 612. Where an officer is called in to enforce the-

atre regulations, the theatre is liable, but if he discovers the violation of a city ordinance, and makes an arrest without either the implied or express authority of the theatre, and although he was, prior to such arrest, the agent of the theatre, yet his act was an official one, and he is solely liable. *Jardine v. Cornell*, 50 N. J. Law 485.

In this connection there is an interesting case to be noted. The Massachusetts Code provided that persons requesting the appointment of a special officer should give a bond to the city treasurer, "to be liable to parties aggrieved by *official* misconduct of such police officer to the same extent as for the torts of servants and agents in their employ." It further provided that recovery could be had upon the bond as upon the bond of a constable. But the court held that this provision did not make the officer the servant of the person at whose request he was appointed. *Healy v. Lathrop, supra.* Where an officer is an agent, and exceeds his authority in a particular case, the principal may yet be liable. *Eichengreen v. Sourville*, 35 Fed. Rep. 116. The question as to whether the officer acted within the scope of his employment is for the jury. *Duggan v. Railroad Co.*, 159 Pa. St. 248; *Tyson v. Bauland, supra.* The underlying principle of all those cases wherein it was held that the special officer was a servant, and, therefore, the employer was liable, was well stated by the court in *Mallach v. Ridley*, 24 Abb. N. Cas. (N. Y. Sup. Ct.) 172, as follows: "The employers can not confer authority upon the employee and claim the benefits of his action when he acts advisedly, and absolve themselves from all risk when he acts on insufficient evidence."

FORGERY AT COMMON LAW AND ITS EXTENSION UNDER STATUTES.

The case of *People v. Abeel*, 34 N. Y. Law Journal 189 (N. Y. Ct. of App.), decided recently, announces a doctrine of forgery little short of revolutionary in its departure from the rules of common law governing this crime. The decision is an extremely important one in the development of the criminal law and merits the careful attention of the American bar.

The case under consideration involved the construction of sec. 514, subdivision 3, of the New York Penal Code, the provisions of which, so far as pertinent to the case, are as follows: "A person who . . . shall alter (utter) . . . any letter . . . purporting to have been written . . . by another person . . . which said letter . . . the person uttering the same shall know to be false . . ., and by the uttering of which the sentiments, opinions, conduct, character, prospects, interests or rights of such other person shall be misrepresented or otherwise injuriously affected . . . is guilty of forgery in the third degree." The court held that the uttering of a false writing, with knowledge of its falsity, by which writing the sentiments, opinions, conduct or rights of another person are misrepresented, constitutes the crime of forgery under the statute. The mere misrepresentation is made the gist of the offense, and proof of injury to the one whose